

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY GLENN BESTER,

Plaintiff,

-v.-

9: 03-CV-1041
(TJM)(GJD)

B. DIXON; JAMES SERERIA; and DICK RESTON,

Defendants.

APPEARANCES:

ANTHONY GLENN BESTER

Plaintiff, *pro se*

99-B-0253

Attica Correctional Facility

P.O. Box 149

Attica, New York 14011-0149

THOMAS J. MCAVOY, Senior Judge

ORDER

Plaintiff Anthony Glenn Bester ("plaintiff") filed a civil rights complaint with the Southern District of New York which was transferred to this Court in August 2003. Dkt. No. 1. By Order of this Court filed September 16, 2003, plaintiff was directed to file an amended complaint because his original complaint did not provide the dates of the alleged wrongdoing by defendants. Dkt. No. 4 ("September Order"). The September Order also directed plaintiff to either pay the filing fee required for this action or provide the Court with an *in forma pauperis* application and an inmate authorization form. *Id.* Thereafter, plaintiff filed an *in forma pauperis* application and authorization form. Dkt. Nos. 5 and 6. By Order of this Court filed December 11, 2004, plaintiff was granted *in forma pauperis* status. Dkt. No. 7 ("December Order"). The December Order granted plaintiff an extension of time to file an amended complaint. *Id.* On February 13, 2004,

plaintiff's amended complaint was filed with the Court. Dkt. No. 10. The amended complaint was extremely lengthy, included no caption, and again did not set forth the dates of the alleged wrongdoing by defendants. In light of plaintiff's *pro se* status and his apparent difficulty in drafting a proper complaint, by Order of this Court filed April 15, 2004, plaintiff was given a final opportunity to file an amended complaint. Dkt. No. 13 ("April Order"). The April Order afforded plaintiff thirty days from the filing date of the Order to file the amended complaint. *Id.* Plaintiff never filed an amended complaint in accordance with the April Order. On June 22, 2004, Judgment was entered against plaintiff dismissing this action for plaintiff's failure to comply with the Court's April Order. Dkt. No. 14.

In August 2004, the Court received a letter from plaintiff which the Court construed as plaintiff's request for relief from the Judgment entered against him. Dkt. No. 15. Plaintiff stated that he has been confined in Marcy Psychiatric Center and had been unable to pursue any of his legal work. *Id.* In light of plaintiff's *pro se* status and because of his asserted confinement and medical problems, by Order of this Court filed November 5, 2004, plaintiff's motion for relief from Judgment was granted. Dkt. No. 16 ("November Order"). Plaintiff was advised that if he wished this action to proceed, he must file an amended complaint in accordance with the terms of the prior orders of this Court within thirty (30) days of the filing date of the November Order. *Id.*

Presently before the Court is an amended complaint filed by plaintiff. Dkt. No. 18. This amended complaint was submitted by plaintiff in compliance with the November Order. See Dkt. No. 18. Plaintiff alleges that on December 22, 2002, while he was

incarcerated at Auburn Correctional Facility, he was physically assaulted by the defendants. *Id.* Since the amended complaint filed by plaintiff appears to cure the defects that existed in his prior complaints, it may properly be filed with the Court.¹

WHEREFORE, it is hereby

ORDERED, that the Clerk shall issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service upon the defendants, together with a copy of this Order. The Clerk shall also forward a copy of the summons and amended complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order, and it is further

ORDERED, that a formal response to plaintiff's complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure subsequent to service of process on the defendants, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action shall be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

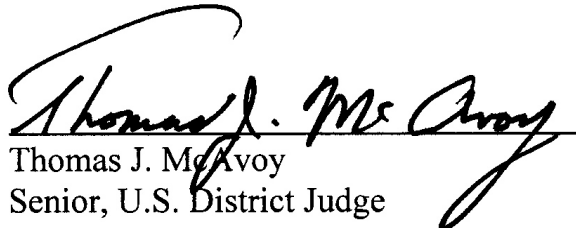
Any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of it was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a proper certificate of service is to be

¹ Plaintiff has failed to name the parties in the caption of his complaint. See Dkt. No. 18 at 1. Plaintiff has however clearly listed the names of the parties in paragraphs 2 and 3 of the amended complaint and has included allegations of wrongdoing against each of the three defendants -- B. Dixon, James Sereria, and Dick Reston -- in the body of his amended complaint. *Id.* at 1-5. In light of plaintiff's *pro se* status, the Court will overlook this technical deficiency.

returned without processing. Plaintiff shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. Motions must comply with Local Rule 7.1 of the Northern District of New York and are to be made returnable before the assigned Magistrate Judge on any business day with proper allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office of any change in his address; his failure to do this will result in the dismissal of the instant action.** All motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff.

Dated: April 27, 2005


Thomas J. McAvoy
Senior, U.S. District Judge